

MEMORANDUM

DATE: October 14, 2009
TO: The Chesapeake Bay Board
FROM: Patrick T. Menichino, Environmental Compliance Specialist
SUBJECT: CBV-09-013 – Mr. Jeffery A. Hines, 3657 Bridgewater Drive

Mr. Jeffery A. Hines (Lessee) residing at 3657 Bridgewater Drive, Mill Creek Landing, on behalf of Scott and Brandi Brand (Owners), filed an appeal to James City County's Chesapeake Bay Board (Board) on August 14, 2009. Mr. Hines is appealing a Notice of Violation and administrative order issued by the County on July 28, 2009. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, and the restoration of the RPA with native plantings. Staff has reviewed the unauthorized clearing and estimates the RPA impacts as approximately 5000 square feet. It is important to note that a large portion of those impacts were actually within wetlands which is considered part of the resource.

On June 22, 2009 Staff became aware of the unauthorized clearing following a complaint from a resident. Staff initiated an investigation and as a result has documented a violation of the County's Chesapeake Bay Preservation Ordinance. Staff has met with the Owners and the Lessee several times to discuss resolving the violation. During those meetings, the owners appeared to be agreeable to entering into the restoration agreement but the Lessee was not.

Historical Background Information

On May 11, 2005 the County's Chesapeake Bay Board granted an exception (CBE-05-029) to James Duguay of Performance Contracting, to allow for the construction of a single family residence within the RPA located on the above referenced property. That exception granted 8652 square feet of disturbance within the RPA buffer, and 2985 square feet of impervious area.

An extensive RPA mitigation planting plan was required to offset the proposed Impacts and that plan was approved by the Board. Because of the environmental features located on the property, such as wetlands, a major portion of the RPA mitigation plantings had to be located on the side and in front of the proposed residence.

On March 21, 2006, Scott and Brandi Brand purchased the property and residence from Performance Contracting.

On January, 4, 2007 James City County sent out standard RPA notification letters to property owners in the County, alerting them that RPA components may be located on their property. Scott and Brandi Brand of 3657 Bridgewater Drive were included in that official notification.

On June 22, 2009 Staff became aware of the unauthorized clearing and grading, and documented the violation.

On July 14, 2009 staff met with the Owners and the Lessee to discuss the violation and a possible method of resolution. During that meeting the owner exhibited a willingness to execute a Chesapeake Bay Restoration Agreement, but the Lessee requested time to explore other options.

On July 28, 2009 separate notices of violation were sent to the Owners and to the Lessee.

Staff Guidance and Recommendations

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. Mr. Jeffrey A. Hines is currently the lessee of the property and not the owner. In a statement submitted to the Board, Mr. Hines appears to offer the following information in support of the appeal:
 1. He had no prior knowledge that a Chesapeake Bay Preservation Area was designated on the property.
 2. The Owners authorized his clearing of native vegetation within the RPA and the establishment of a lawn.
 3. That no disclosure was provided during the residential sale of the property.
 4. That he would like to have a lawn in the backyard for his family.
2. The Chesapeake Bay Preservation Ordinance Sections 23-7 and 23-10 require that authorization and a plan of development be reviewed and approved by the County prior to activities within RPA's.
3. Neither the Owners nor the Lessee have challenged the following facts in this case:
 1. No plan of development or RPA buffer modification plan was submitted to the County for review and approval as is required by the Ordinance.
 2. No authorization for the clearing and removal of native vegetation from within the RPA was requested from the County by either the Owners or the Lessee.
 3. That a violation of the County's Chesapeake Bay Ordinance resulted from the above referenced activities that occurred on the property.
4. Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Staff's guidance to the Board on deciding this matter is as follows:

1. The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within Mill Creek Landing that have RPA components located on them.
2. The granting of the appeal in this case will adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity. Granting relief to the appellant resulting from a violation of the ordinance and could result in similar

unauthorized actions by other property owners in the vicinity. In addition, granting the appeal will all but eliminate any remaining natural RPA buffer resulting in the removal of any notable water quality function on the entire property and degradation of water quality in the tributaries to the Bay.

3. The appellant in fact caused the hardship through an unauthorized activity thereby the hardship is self imposed.

Staff contends that to be consistent with the purpose and intent of the Ordinance the Board should deny the appeal, and allow the Chesapeake Bay Restoration Agreement process established by the County to proceed.